



December 21, 2001

Ms. Shelly Eversole  
Winstead Sechrist & Minick  
100 Congress Avenue, Suite 800  
Austin, Texas 78701

OR2001-6057

Dear Ms. Eversole:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155960.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received three requests to "review all E-Mail or other documents received by or sent by Board of Directors President Jimmy Griffith to or from any other person or organization. . ." The first request dated August 21, 2001 concerned the period of time from May 1, 2001 to the date that the request was received by the district. The second request dated August 23, 2001 concerned the period of time from May 1, 2000 through April 30, 2001. The third request dated September 21, 2001 concerned the period of time from May 2000 through September 2001.<sup>1</sup> The district states that it maintains no responsive emails and indicates that Mr. Griffith has saved no responsive emails.<sup>2</sup> The district also sought clarification of the portions of the requests pertaining to the requested "other documents." See Gov't Code

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<sup>1</sup> We treat this third request as a single request for information for purposes of this ruling. Your questions with respect to the cost provisions of chapter 552 of the Government Code should be addressed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

<sup>2</sup> It is implicit in several provisions of the Public Information Act (the "Act") that the Act applies only to information already in existence. See Gov't Code §§ 552.002, .021, .227, .351. The Act does not require a governmental body to prepare new information in response to a request. See Attorney General Opinion H-90 (1973); see also Open Records Decision Nos. 87 (1975), 342 at 3 (1982), 416 at 5 (1984), 452 at 2-3 (1986), 555 at 1-2 (1990), 572 at 1 (1990). A governmental body must only make a good faith effort to relate a request to information which it holds. See Open Records Decision No. 561 at 8 (1990).

§ 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision Nos. 663 at 5 (1999) (addressing circumstances under which request for clarification tolls deadline under section 552.301(b)), 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). The requestor subsequently responded to the district's request for clarification in a letter dated September 6, 2001 by stating that the requests were limited only by the time parameters noted in each of the requests.

By letter dated September 19, 2001, the district provided the requestor an estimate of the anticipated personnel costs for making the information available for inspection. *See* Gov't Code § 552.2615 (providing that governmental body shall provide requestor with estimate of charges if charges exceed \$40). By letter dated September 21, 2001, the requestor responded to the district's section 552.2615 letter and stated that he wished to "cancel" his second request. Therefore, this office presumes that the second request for information has been withdrawn.

As for the other requests, you indicate that the district will release to the requestor the information that the district considers to be related to the official business of the district. However, you assert that a portion of the requested information is not "public information" under section 552.002 of the Government Code. You specifically claim that Mr. Griffith's personal documents and correspondence that are unrelated to district business and that are maintained by Mr. Griffith do not constitute "public information" under section 552.002. Section 552.002 defines "public information" as information "collected, assembled, or maintained under a law or ordinance or in connection with transaction of official business: (1) by a governmental body; or (2) for a governmental body and the governmental body owns the information or has a right of access to it." Gov't Code § 552.002(a). Thus, under this provision, information is generally "public information" within the scope of the Act when it relates to the official business of a governmental body or is maintained by a public official or employee in the performance of official duties, even though it may be in the possession of an individual. *See* Open Records Decision No. 635 at 4 (1995). We note that the determination of whether information is subject to the Act is case specific. Since you have not submitted a copy of Mr. Griffith's "personal documents and correspondence," we cannot determine that this particular requested information constitutes public records. Consequently, this office cannot rule on the public nature of this information.

In summary, we assume that the district has provided the requestor with all responsive information that is related to the district's official business to the extent that it exists. We cannot rule on the public nature of Mr. Griffith's "personal documents and correspondence," since you have not submitted a copy of that information to our office for review.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

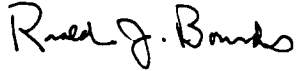
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" being more prominent.

Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 155960

cc: Mr. John C. McLemore  
8400 Cornerwood Drive  
Austin, Texas 78717